

ANNEX B to Department of Defense Military Commission Instruction No. 5, "Qualification of Civilian Defense Counsel"

**AFFIDAVIT AND AGREEMENT BY CIVILIAN DEFENSE COUNSEL**

Pursuant to Section 4(C)(3)(b) of Department of Defense Military Commission Order No. 1, "Procedures for Trials by Military Commissions of Certain Non-United States Citizens in the War Against Terrorism," dated March 21, 2002 ("MCO No. 1"), Military Commission Instructions No. 4, "Responsibilities of the Chief Defense Counsel, Detailed Defense Counsel, and Civilian Defense Counsel" ("MCI No. 4") and No. 5, "Qualification of Civilian Defense Counsel" ("MCI No. 5"), and in accordance with the President's Military Order of November 13, 2001, "Detention, Treatment, and Trial of Certain Non-Citizens in the War Against Terrorism," 66 F.R. 57833 (Nov. 16, 2001) ("President's Military Order"), I [Name of Civilian Attorney], make this Affidavit and Agreement for the purposes of applying for qualification as a member of the pool of Civilian Defense Counsel available to represent Accused before military commissions and serving in that capacity.

I. Oaths or Affirmations. I swear or affirm that the following information is true to the best of my knowledge and belief:

A. I have read and understand the President's Military Order, MCO No. 1, MCI No. 4, MCI No.5, and all other Military Commission Orders and Instructions concerning the rules, regulations and instructions applicable to trial by military commissions. I will read all future Orders and Instructions applicable to trials by military commissions.

B. I am aware that my qualification as a Civilian Defense Counsel does not guarantee my presence at closed military commission proceedings or guarantee my access to any information protected under Section 6(D)(5) or Section 9 of MCO No. 1.

II. Agreements. I hereby agree to comply with all applicable regulations and instructions for counsel, including any rules of court for conduct during the course of proceedings, and specifically agree, without limitation, to the following:

A. I will notify the Chief Defense Counsel and, as applicable, the relevant Presiding Officer immediately if, after the execution of this Affidavit and Agreement but prior to the conclusion of proceedings (defined as the review and final decision of the President or, if designated, the Secretary of Defense), there is any material change in any of the information provided in my application, including this Affidavit and Agreement, for qualification as member of the Civilian Defense Counsel pool. I understand that such notification shall be in writing and shall set forth the substantive nature of the changed information.

B. I will be well prepared and will conduct the defense zealously, representing the Accused throughout the military commission process, from the inception of my representation through the completion of any post-trial proceedings as detailed in Section 6(H) of MCO No. 1. I will ensure that these proceedings are my primary duty. Prior to undertaking representation of an Accused, I will ensure that I can commit sufficient time and resources to handle an Accused's case expeditiously through its conclusion. In making this assessment, I am aware that the Presiding

Officer may deny any request for a delay or continuance of proceedings based on reasons relating to matters that arise in the course of my law practice or other professional or personal activities that are not related to military commission proceedings, if in the Presiding Officer's determination such a continuation would unreasonably delay the proceedings.

- C. The Defense Team shall consist entirely of myself, Detailed Defense Counsel, and other personnel provided by the Chief Defense Counsel, the Presiding Officer, or the Appointing Authority. I understand I must include the justification for particular individuals to be added to the defense team in a request to the Chief Defense Counsel, the Presiding Officer, or the Appointing Authority as appropriate, and I will state any special requests regarding access to the Accused, Protected Information, as defined in MCO No. 1, Paragraph 6.D.5.a, or the ability to enter into a confidential relationship. Regarding entering into a confidential relationship, I understand that those determined eligible to receive attorney confidences or attorney work product will be required to complete an affidavit similar to this Annex prior to receiving any attorney confidences or attorney work product. I further understand that those I request to have access to an Accused, other detainees, or Protected Information will be required to obtain a security clearance and be specifically approved for access to each individual or item of Protected Information requested, prior to access being granted. I understand that nothing in this agreement allows me to disregard any laws, rules, regulations, or instructions governing the handling of classified information or other Protected

Information. I will make no claim against the U.S. Government for any fees or costs associated with my conduct of the defense or related activities or efforts.

- D. Recognizing that my representation does not relieve Detailed Defense Counsel of duties specified in Section 4(C)(2) of MCO No. 1, I will work cooperatively with such counsel to ensure coordination of efforts and to ensure such counsel is capable of conducting the defense independently if necessary.
- E. During my representation of an Accused before military commissions, unless I obtain approval in advance from the Appointing Authority or the Presiding Officer to do otherwise, I will comply with the following restrictions on my travel and communications:
1. I will not discuss, transmit, communicate, or otherwise share documents or information specific to the case with anyone except as is necessary to represent my client before a military commission. In this regard, I will limit such discussion, transmission, communication or sharing to: (a) persons who have been designated as members of the Defense Team in accordance with applicable rules, regulations, and instructions; (b) commission personnel participating in the proceedings; (c) potential witnesses in the proceedings; or (d) other individuals with particularized knowledge that may assist in discovering relevant evidence in the case. Such discussions, transmissions, or sharing may include consulting with other legal professionals for assistance with defense tasks that I may have otherwise personally undertaken consistent with this agreement, and any other applicable laws, military commission

orders, instructions, rules, regulations, or directives. I understand that I may not share attorney confidences, attorney work product, or any Protected Information with anyone unless that individual has been previously approved for that specific type of relationship or information as part of the Defense Team in accordance with paragraph II(C) of this affidavit. In the case of doubt regarding whether I may share information about a case with another, I understand that I have an affirmative duty to request clarification from the Appointing Authority or Presiding Officer before discussing, transmitting, communicating, or otherwise sharing documents or information. I understand that nothing in this agreement allows me to disregard any laws, rules, regulations, or instructions governing the handling of classified information and material, or other Protected Information.

2. Once proceedings have begun, I will not travel from the site of the proceedings without the approval of the Appointing Authority or the Presiding Officer. I understand the Presiding Officer or the Appointing Authority will not unreasonably restrict travel from the site of the proceedings during extended breaks in commission proceedings.

F. At no time, to include any period subsequent to the conclusion of the proceedings, will I make any public or private statements regarding any closed sessions of the proceedings or any document or material constituting Protected Information under MCO No. 1. This restriction does not apply to discussions with other members of the Defense Team or the Chief Defense Counsel who are appropriately authorized

to receive the specific Protected Information in question, when such disclosure is related to the Defense efforts on behalf of the Accused during military commission proceedings or subsequent review. I understand that nothing in this agreement allows me to disregard any laws, rules, regulations, or instructions governing the handling of Protected Information.

- G. I understand and agree to comply with all rules, regulations and instructions governing the handling of classified information and material or other Protected Information.
- H. I understand that there may be reasonable restrictions on the time and duration of contact I may have with my client, as imposed by the Appointing Authority, the Presiding Officer, detention authorities, or regulation.
- I. I understand that communications with an Accused are not protected if they would facilitate criminal acts or a conspiracy to commit criminal acts, or if those communications are not related to the seeking or providing of legal advice.
- J. I agree that I shall reveal to the Chief Defense Counsel, and any other appropriate authorities, information relating to the representation of my client to the extent that I reasonably believe necessary to prevent the commission of a future criminal act that I believe is likely to result in death or substantial bodily harm, or significant impairment of national security.

K. I understand and agree that nothing in this Affidavit and Agreement creates any substantive, procedural, or other rights for me as counsel or for my client(s).

/s/ \_\_\_\_\_

Print Name: \_\_\_\_\_

Address: \_\_\_\_\_

\_\_\_\_\_

Date: \_\_\_\_\_

STATE OF )

COUNTY OF )

Sworn to and subscribed before me, by \_\_\_\_\_, this \_\_\_\_ day of \_\_\_\_\_, 20\_\_.

Notary

My commission expires: